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SENATE BILL 169

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

John Arthur Smith

AN ACT

RELATING TO TAXATION; ESTABLISHING A CAP ON THE AMOUNT OF A
FILM PRODUCTION TAX CREDIT; AMENDING PROVISIONS OF CHAPTER 7,
ARTICLE 2F NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 7-2F-1 NMSA 1978 (being Laws 2002,
Chapter 36, Section 1, as amended) is amended to read:

"7-2F-1. FILM PRODUCTION TAX CREDIT.--

A. The tax credit created by this section may be referred to as the "film production tax credit". An eligible film production company may apply for, and, subject to the limitation in Subsection C of this section, the taxation and revenue department may allow a tax credit in an amount equal to the percentage specified in Subsection B of this section of:

- (1) direct production expenditures made in New

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1 Mexico that:

2 (a) are directly attributable to the
3 production in New Mexico of a film or commercial audiovisual
4 product;

5 (b) are subject to taxation by the state
6 of New Mexico; and

7 (c) exclude direct production
8 expenditures for which another taxpayer claims the film
9 production tax credit; and

10 (2) postproduction expenditures made in New
11 Mexico that:

12 (a) are directly attributable to the
13 production of a commercial film or audiovisual product;

14 (b) are for services performed in New
15 Mexico;

16 (c) are subject to taxation by the state
17 of New Mexico; and

18 (d) exclude postproduction expenditures
19 for which another taxpayer claims the film production tax
20 credit.

21 B. Except as provided in [~~Subsections C and J~~]
22 Subsection D of this section, the percentage to be applied in
23 calculating the amount of the film production tax credit is
24 twenty-five percent.

25 C. The maximum amount of the film production tax

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1 credit allowable with respect to any film or commercial
2 audiovisual product is two million dollars (\$2,000,000) with
3 respect to direct production expenditures made on or after July
4 1, 2011 and two million dollars (\$2,000,000) with respect to
5 postproduction expenditures made on or after July 1, 2011.

6 ~~[G-]~~ D. With respect to expenditures attributable
7 to a production for which the film production company receives
8 a tax credit pursuant to the federal new markets tax credit
9 program, the percentage to be applied in calculating the film
10 production tax credit is twenty percent.

11 ~~[D-]~~ E. The film production tax credit shall not be
12 claimed with respect to direct production expenditures or
13 postproduction expenditures for which the film production
14 company has delivered a nontaxable transaction certificate
15 pursuant to Section 7-9-86 NMSA 1978.

16 ~~[E-]~~ F. A long-form narrative film production for
17 which the film production tax credit is claimed pursuant to
18 Paragraph (1) of Subsection A of this section shall contain an
19 acknowledgment that the production was filmed in New Mexico.

20 ~~[F-]~~ G. To be eligible for the film production tax
21 credit, a film production company shall submit to the New
22 Mexico film division of the economic development department
23 information required by the division to demonstrate conformity
24 with the requirements of this section and shall agree in
25 writing:

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1 (1) to pay all obligations the film production
2 company has incurred in New Mexico;

3 (2) to publish, at completion of principal
4 photography, a notice at least once a week for three
5 consecutive weeks in local newspapers in regions where filming
6 has taken place to notify the public of the need to file
7 creditor claims against the film production company by a
8 specified date;

9 (3) that outstanding obligations are not
10 waived should a creditor fail to file by the specified date;
11 and

12 (4) to delay filing of a claim for the film
13 production tax credit until the New Mexico film division
14 delivers written notification to the taxation and revenue
15 department that the film production company has fulfilled all
16 requirements for the credit.

17 [~~G.~~] H. The New Mexico film division shall
18 determine the eligibility of the company and shall report this
19 information to the taxation and revenue department in a manner
20 and at times the economic development department and the
21 taxation and revenue department [~~shall~~] agree upon.

22 [~~H.~~] I. To receive a film production tax credit, a
23 film production company shall apply to the taxation and revenue
24 department on forms and in the manner the department may
25 prescribe. The application shall include a certification of

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1 the amount of direct production expenditures or postproduction
2 expenditures made in New Mexico with respect to the film
3 production for which the film production company is seeking the
4 film production tax credit.

5 J. If the requirements of this section have been
6 complied with, the taxation and revenue department shall
7 approve the film production tax credit and issue a document
8 granting the tax credit.

9 ~~[F.]~~ K. The film production company may apply all
10 or a portion of the film production tax credit granted against
11 personal income tax liability or corporate income tax
12 liability. If the amount of the film production tax credit
13 claimed exceeds the film production company's tax liability for
14 the taxable year in which the credit is being claimed, the
15 excess shall be refunded.

16 ~~[J. As applied to direct production expenditures~~
17 ~~for the services of performing artists, the film production tax~~
18 ~~credit authorized by this section shall not exceed five million~~
19 ~~dollars (\$5,000,000) for services rendered by all performing~~
20 ~~artists in a production for which the film production tax~~
21 ~~credit is claimed.]"~~

22 SECTION 2. Section 7-2F-2 NMSA 1978 (being Laws 2003,
23 Chapter 127, Section 2, as amended) is amended to read:

24 "7-2F-2. DEFINITIONS.--As used in Chapter 7, Article 2F
25 NMSA 1978:

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1 A. "commercial audiovisual product" means a film or
2 a videogame intended for commercial exploitation;

3 B. "direct production expenditure" means a
4 transaction that is subject to taxation in New Mexico,
5 including:

6 (1) payment of wages, fringe benefits or fees
7 for talent, management or labor to a person who [~~is~~] has been a
8 New Mexico resident for purposes of the Income Tax Act for at
9 least the previous six months;

10 (2) payment to a personal services corporation
11 for the services of a performing artist if:

12 (a) the personal services corporation
13 pays gross receipts tax in New Mexico on the portion of those
14 payments qualifying for the tax credit; and

15 (b) the performing artist receiving
16 payments from the personal services corporation pays New Mexico
17 income tax; and

18 (3) any of the following provided by a vendor:

19 (a) the story and scenario to be used
20 for a film;

21 (b) set construction and operations,
22 wardrobe, accessories and related services;

23 (c) photography, sound synchronization,
24 lighting and related services;

25 (d) editing and related services;

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- 1 (e) rental of facilities and equipment;
2 (f) leasing of vehicles, not including
3 the chartering of aircraft for out-of-state transportation;
4 however, New Mexico-based chartered aircraft for in-state
5 transportation directly attributable to the production shall be
6 considered a direct production expenditure;
7 (g) food or lodging;
8 (h) commercial airfare if purchased
9 through a New Mexico-based travel agency or travel company for
10 travel to and from New Mexico or within New Mexico that is
11 directly attributable to the production;
12 (i) insurance coverage and bonding if
13 purchased through a New Mexico-based insurance agent; and
14 (j) other direct costs of producing a
15 film in accordance with generally accepted entertainment
16 industry practice;

17 C. "federal new markets tax credit program" means
18 the tax credit program codified as Section 45D of the United
19 States Internal Revenue Code of 1986, as amended;

20 D. "film" means a single [~~media~~] medium or
21 multimedia program, excluding advertising messages other than
22 national or regional advertising messages intended for
23 exhibition, that:

24 (1) is fixed on film, digital medium,
25 videotape, computer disc, laser disc or other similar delivery

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1 medium;

2 (2) can be viewed or reproduced;

3 (3) is not intended to and does not violate a
4 provision of Chapter 30, Article 37 NMSA 1978; and

5 (4) is intended for reasonable commercial
6 exploitation for the delivery medium used;

7 E. "film production company" means a person that
8 produces one or more films or any part of a film; and

9 F. "postproduction expenditure" means an
10 expenditure for editing, Foley recording, automatic dialogue
11 replacement, sound editing, special effects, including
12 computer-generated imagery or other effects, scoring and music
13 editing, beginning and end credits, negative cutting,
14 soundtrack production, dubbing, subtitling or addition of sound
15 or visual effects; but not including an expenditure for
16 advertising, marketing, distribution or expense payments."